

House Bill 295

By: Representatives Lane of the 167th, Barnard of the 166th, Dollar of the 45th, Levitas of the 82nd, and Weldon of the 3rd

A BILL TO BE ENTITLED

AN ACT

1 To establish "The Jail and Prison Reimbursement Act"; to amend Code Section 42-4-50 of
2 the Official Code of Georgia Annotated, relating to definitions pertaining to medical services
3 for inmates in jails, so as to provide for the recovery of costs for mental health and other
4 related services; to amend Article 3 of Chapter 5 of Title 42 of the Official Code of Georgia
5 Annotated, relating to conditions of detention generally, so as to provide for the
6 reimbursement of medical and mental health care costs and related costs provided to an
7 inmate by state, county, and private detention facilities; to provide for the repayment of
8 designated costs of detention by certain inmates; to provide legislative findings; to provide
9 a short title; to provide for definitions; to provide for related matters; to provide an effective
10 date; to repeal conflicting laws; and for other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

12 **SECTION 1.**

13 The General Assembly recognizes that the costs of detaining a criminal offender continues
14 to rise while government resources remain limited. It is further recognized that many
15 inmates in the detention system have rich sources of income and assets outside of the
16 detention system which may include bank accounts, inheritances, real estate, social security
17 payments, veteran's payments, and other types of financial resources. In recognition of this
18 fact, the daily subsistence cost of incarcerating inmates, which is a great burden on the
19 taxpayers of this state, should be reduced by requiring each inmate, who is financially
20 capable, to pay their fair portion of their costs of incarceration.

21 **SECTION 2.**

22 This Act shall be known and may be cited as "The Jail and Prison Reimbursement Act."

SECTION 3.

Code Section 42-4-50 of the Official Code of Georgia Annotated, relating to definitions pertaining to medical services for inmates in jails, is amended in paragraph (4) as follows:

"(4) 'Medical care' ~~includes~~ means medical attention, dental care, mental health care, optometry care, physical or mental health therapy, and prescribed medicine and prosthesis and necessary and associated medical, dental, mental health treatment, or optometry, costs such as transportation, hospitalization, guards, room, and board."

SECTION 4.

Article 3 of Chapter 5 of Title 42 of the Official Code of Georgia Annotated, relating to conditions of detention generally, is amended by revising Code Section 42-5-54, relating to information from inmates relating to medical insurance, as follows:

"42-5-54.

(a) As used in this Code section, the term:

(1) 'Detention facility' means a state, county, or private prison, correctional institution, workcamp, or other ~~county detention~~ facility used for the detention of persons convicted of a felony or a misdemeanor, but shall not include a jail.

(2) 'Inmate' means a person who is lawfully detained in a detention facility by reason of being convicted of a felony or a misdemeanor ~~and who is insured under existing individual health insurance, group health insurance, or prepaid medical care coverage or is eligible for benefits under Article 7 of Chapter 4 of Title 49, the 'Georgia Medical Assistance Act of 1977.'~~ Such term does not include any sentenced inmate who is the responsibility of the Department of Corrections.

(3) 'Officer in charge' means the warden, captain, or superintendent or other person having the supervision of any detention facility.

(4) 'Medical care' means medical, dental, mental health, and optometry treatment, including physical or mental health therapy, prescribed medicine, professional services, and prosthesis, and all necessary and associated services incidental to treatment such as transportation, hospitalization, and security.

(b) The officer in charge or his or her designee may require an inmate to furnish the following information:

(1) The existence of any health insurance, group health plan, dental insurance, ophthalmological insurance, or prepaid medical care coverage under which the inmate is insured;

(2) The eligibility for benefits to which the inmate is entitled under Article 7 of Chapter 4 of Title 49, the 'Georgia Medical Assistance Act of 1977';

(3) The name and address of the third-party payor; and

(4) The policy or other identifying number.

(c) The officer in charge will provide a sick, injured, or disabled inmate access to medical services and may arrange for the inmate's health insurance carrier to pay the health care provider for the medical services rendered.

(d) The liability for payment for medical care described under subsection (b) and (c) of this Code section may not be construed as requiring payment by any person or entity, except by an inmate personally or by his or her carrier through coverage or benefits described under paragraph (1) of subsection (b) of this Code section or by or at the direction of the Department of Community Health pursuant to paragraph (2) of such subsection.

(e) If an inmate is not eligible for health insurance benefits, then the inmate shall be liable for the costs of medical care provided to the inmate and the assets and property of such inmate may be subject to levy and execution under court order to satisfy such costs. An inmate's account maintained by the detention facility in excess of \$100.00 may be attached for payment of medical care costs owed without a court order. An inmate in a detention facility shall cooperate with the governing authority in seeking reimbursement under this article for medical care expenses incurred by the governing authority for that inmate. An inmate who willfully refuses to cooperate as provided in this Code section shall not receive or be eligible to receive any good-time allowance or other reduction of time to be served.

(f)(1) An attorney for a governing authority may file a civil action to seek reimbursement from an inmate for the costs of medical care provided to such inmate while incarcerated.

(2) A civil action brought under this article shall be instituted in the name of the officer in charge and shall state the date and place of sentence, the medical care provided to such inmate, and the amount or amounts due to the governing authority pursuant to this Code section. The reimbursements secured under this Code section shall be credited to the general fund of the governing authority to be available for general fund purposes. Any action brought on behalf of a private detaining entity shall be considered an action on behalf of the governing authority detention facility or officer in charge with whom such private entity has contracted to house the inmate who is the subject of the civil action.

(3) If necessary to protect the governing authority's right to obtain reimbursement under this article against the disposition of known property, the governing authority in the name of the officer in charge may seek issuance of an ex parte restraining order to restrain the inmate from disposing of the property pending a hearing on an order to show cause why the particular property should not be applied to reimbursement of the governing authority for the costs of medical care provided to the inmate.

(4) To protect and maintain the property pending resolution of the matter, the court, upon request, may appoint a receiver.

(g) Before entering any order on behalf of the governing authority against the inmate, the court shall take into consideration any legal obligation of the inmate to support a spouse, minor children, or other dependents and any moral obligation to support dependents to whom the inmate is providing or has in fact provided support.

(h) The court may enter a money judgment against the inmate and may order that the inmate's property be liable for reimbursement for the costs of medical care provided to the inmate. Any order directing payment of an inmate's medical care cost shall survive against the estate of the inmate.

(i) The sentencing judge and the sheriff of any county in which an inmate's property is located shall furnish to the attorney for the governing authority all information and assistance possible to enable the attorney to secure reimbursement for the governing authority under this article.

~~(e)~~(j) Nothing in this Code section shall be construed to relieve the governing authority, governmental unit, subdivision, or agency having the physical custody of an inmate from its responsibility to pay for any medical and hospital care rendered to such inmate regardless of whether such individual has been convicted of a crime."

SECTION 5.

Said Article is further amended by adding a new Code section as follows:

"42-5-55.1.

(a) As used in this Code section, the term:

(1) 'Cost of incarceration' means the costs associated with providing room, board, clothing, food, security, and other normal living expenses for an inmate but shall not include the costs of medical or mental health care expenses.

(2) 'Detention facility' means a state, county, municipal, or private correctional institution, workcamp, work release facility, detention center, jail, or other facility used for the detention of persons convicted of a felony or a misdemeanor.

(3) 'Inmate' means a person who is lawfully held in a detention facility by reason of being charged or convicted of a felony, misdemeanor, or municipal offense.

(4) 'Officer in charge' means a warden, superintendent, sheriff, or any person having authority to supervise a detention facility.

(b) A detention facility is authorized to establish an average per diem cost of incarceration in an amount not to exceed \$40.00 per day. Any inmate held in a detention facility shall be charged the per diem cost of incarceration for each 24 hour period of incarceration. An inmate shall be liable for the costs of incarceration.

(c) The costs and expenses provided for in this Code section may be collected upon release of the inmate from the detention facility or biannually where the inmate remains in the custody of a detention facility. Collection of cost of incarceration may be conducted:

(1) By deducting payment from an inmate's account maintained by the detention facility from funds in the account exceeding \$100.00;

(2) By an attorney filing, in the name of the officer in charge on behalf of the governing authority, a civil action to seek reimbursement from an inmate for the costs of incarceration, thereby subjecting an inmate's assets and property to levy and execution under court order; provided, however, before entering any order on behalf of the governing authority against an inmate, the court may consider the inmate's ability to pay and take into consideration any legal obligation of the inmate to support a spouse, minor children, or other dependents and any moral obligation to support dependents to whom the inmate is providing or has in fact provided support;

(3) If the inmate possesses any estate or becomes possessed of any estate, by petitioning, in the name of the officer in charge, the court having jurisdiction of the detention facility where the inmate is housed indicating there is good reason to believe the inmate has such an estate and pray for the appointment of a guardian, if a guardian has not already been so appointed, and pray the estate may be subjected to payment to the governing authority of the reimbursement costs owed the governing authority. If it appears, upon a hearing, that the inmate has an estate which ought to be subject to the claim of the governing authority, the court shall make an order requiring the guardian of the estate to appropriate and apply the estate or such part thereof, as may appear to be proper toward reimbursing the government authority, to the payment of the cost of incarceration so far incurred by the governing authority and a part thereof towards reimbursing the governing authority for the future expenses which shall be incurred; and

(4) If the sentencing court sentences an inmate to credit for time served and does not provide for any additional incarceration or provides for additional incarceration not to exceed 6 months, by the sentencing court making a determination at the time of sentencing whether the inmate shall be able and required to pay all or part of the costs of incarceration, said determination shall include consideration of the provisions set forth in paragraph (2) of this subsection and shall become a part of the final sentencing order.

(d) If necessary to protect the governing authority's right to obtain reimbursement under this Code section against the disposition of known property, the governing authority may, in the name of the officer in charge, seek issuance of an ex parte restraining order to restrain the inmate from disposing of the property pending a hearing on an order to show cause why the particular property should not be applied to reimbursement of the governing

authority for the costs of incarceration provided to the inmate. To protect and maintain the property pending resolution of the matter, the court, upon request, may appoint a receiver.

(e) An inmate in a detention facility shall cooperate with the personnel of the detention facility and governing authority in seeking reimbursement under this Code section for per diem costs. An inmate who willfully refuses to cooperate as provided in this Code section shall not receive or be eligible to receive any good-time allowance or other reduction of time to be served.

(f) The sentencing judge and prosecutor responsible for the inmate's conviction and the sheriff of any county in which an inmate's property is located shall furnish to the attorney for the governing authority all information and assistance possible to enable the attorney to secure reimbursement for the costs and expenses authorized by this Code section.

(g) A grant of parole or probation shall be conditioned on the payment of part or all reimbursements owed under this Code section as determined by the authority granting parole or providing probation.

(h) The reimbursements secured under this Code section shall be credited to the general fund of the governing authority to be available for general fund purposes. Any action brought on behalf of a private detaining entity and in the name of such private entity's officer in charge, shall be considered an action on behalf of the governing authority, detention facility, or officer in charge with whom such private entity has contracted to house the inmate who is the subject of the civil action.

(i) The officer in charge may determine the amount due the detention facility under this Code section and render a sworn statement thereof. Such a sworn statement shall be admissible in court as direct evidence of the amount due.

(j) Nothing in this Code section shall be construed to relieve the governing authority, state, officer in charge, or any person having the physical custody of an inmate from its responsibility to pay for any medical and hospital care or costs of incarceration provided to such inmate regardless of whether such individual has been convicted of a crime.

(k) Any order directing payment of all or a fair portion of an inmate's cost of incarceration shall survive against the estate of the inmate.

(l) Nothing in this Code section shall be construed to relieve the inmate of any other court ordered or statutorily required obligation to pay any expense, fine, fee, restitution, or other costs or amounts. The costs provided for in this Code section shall be in addition to other such costs and amounts; provided, however, that the total costs charged shall not exceed actual costs incurred.

(m) If an inmate's conviction is subsequently overturned and a final order to that effect entered, any moneys paid by an inmate pursuant to this Code section shall be returned by

202 the collecting governmental authority. The amount of funds returned shall include
203 reasonable interest charges, in an amount not exceeding 5 percent.
204 (n) The amounts owed by an inmate pursuant to this Article shall be automatically
205 deducted from any award, judgement, or taxes owed to such inmate by a governing
206 authority."

207 **SECTION 6.**

208 This Act shall become effective upon its approval by the Governor or upon its becoming law
209 without such approval.

210 **SECTION 7.**

211 All laws and parts of laws in conflict with this Act are repealed.